**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 711 (M/S) 2004

Jagdish Prasad Dobhal

Versus.

State of Uttaranchal & others

Approved for reporting.

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~~Not approved for reporting~~

Date 11.8.2004.

Initial of Judge

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No. 711 of 2004 (M/S)

Jagdish Prasad Dobhal ..... Petitioner

Vs

State of Uttaranchal & others ...Respondents

Sri P.C. Jingan, Advocate for the petitioner.
Standing Counsel for the respondents.

**Hon'ble Rajesh Tandon, J.**

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated July 31, 2004, annexure-40 to the writ petition.

The short submission of the petitioner is that he has constructed a tourist lodge in the name and style of Sri8 Jai Badri Kedar Tourist Lodge at Sector 8 Model House New Tehri District Tehri Garhwal. He has moved application on 14.7.2004 before the S.D.M. Tehri for registration of the said tourist lodge. On the said application report was called from the Chief Medical Officer who has report on 31.7.2004 that he has no objection to the issuing of certificate under Sarais Act, 1867. Fire Officer also submitted his report on 3.8.2004. The counsel for the petitioner has submitted that entire formalities having

been completed and the S.D.M. has no right and authority to pass order dated 31.7.2004 by which business of the petitioner has been effected. Under the Sarai Act 1867 building which is being used as a Sarai is defined as under:

"Sarai" means any building used for the shelter and accommodation of travelers and includes, in any case in which only part of a building is used as a sarai the part so used of such building. It also includes a purao, so far as the provisions of this Act are applicable thereto:

Section 4 of the Act provides as under:

***4. Registers of Sarais to be kept-*** *The Magistrate of the District shall keep a register in which shall be entered by such Magistrate or such other person as he shall appoint in this behalf, the names and residences of the keepers of all sarais within his jurisdiction and the situation of every such saris. No charge shall be made for making any such entry*

*Section 5 provides as under:*

***5. Lodgers, etc. not to be received in Sarais until registered:-*** *After one month after the giving of such notice to register as by this Act provided, the keeper of any sarai or any other person shall not receive and lodger or allow any other person cattle, sheep, elephant, camel or other animals, or any vehicle to halt or be placed in such sarai until the same and the name and residence of the keeper thereof shall have been registered as by this Act provided.*

By the impugned order dated 31.7.2004, the S.D.M. has passed order not to run hotel till it is duly registered. As will appear from the fact on record that on 14.7.2004 petitioner has moved application for registration and various reports were submitted. Section 5 restrains the keeper of a sarai not to allow

any person, if he has not been registered within one month after notice has been received in respect thereof. In the present case, the petition has already applied for registration on 14.7.2004 and as such he has not violated any of the provisions of the Sarai Act. Section 3 of the Sarai act has further safeguard the interest of the petitioner that the notice has to be served within a period of 6 months and if the petitioner does not intimate regarding the Sarai to be run by him but herein this case petitioner has informed the S.D.M. on 14.7.2004 and order has been passed on 31.7.2004 which is against the provisions of section 4 and 5 of the Sarai Act.

In ivew o the aforesaid fact, order dated 31.7.2004 passed by the S.D.M. Tehri is hereby quashed. The respondents are directed to get the Sarai registered in accordance with law and intimation to this effect may be sent to the petitioner.

Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

**(Rajesh Tandon J.)**

11.8.04
*Dhyani